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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 634

A. MASCHMEIJER JR., INC.,

Petitioner,

v.

EASTERN MOTOR EXPRESS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION OF THE MANUFACTURING CHEMISTS' ASSOCIATION, INC., FOR LEAVE TO FILE BRIEF AS AN AMICUS CURIAE

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Now come Nuel D. Belnap and Kenneth J. McAuliffe, as counsel for the Manufacturing Chemists' Association, Inc., pursuant to paragraph 3 of Rule 42, and move the Court for leave to file a brief as *amicus curiae* in support of the petition for writ of certiorari.

The Association is a non-profit corporation, with offices located at 1625 Eye Street, N. W., Washington, D. C. It is the national trade association of the chemical industry. Association members operate numerous plants and warehouses throughout the nation to and from which thousands of shipments of freight move daily by motor vehicle, railroad, and water. Many such shipments move in new and used drums or barrels. Shipments of chemicals by members of the Association constitute more than 90 percent of the total inter city chemical traffic in the United States.

The Association, on behalf of its members, has a vital interest in the law concerning the respective rights and liabilities of the shipper of freight and the common carrier employed to deliver the freight, in respect of claims for loss or damage to freight while in course of transportation.

The decision of the court below, *Eastern Motor Express, Inc.*, v. *A. Maschmeijer Jr., Inc.*, 247 F. 2d 826, holds that a shipper delivering packaged goods to a common carrier for shipment "impliedly warrants that the containers, if not patently inadequate, are fit for the contemplated shipment," and that, with exceptions not pertinent, the duty of the shipper, "as bailor-warrantor, is absolute." If this ruling were to govern the disposition of claims for damage to freight shipped by members of the Association, common carriers in possession of the freight being transported would be relieved from the payment of many thousands of dollars annually which, under a correct interpretation of the law, would be due from such carriers.

RESPONDENT REFUSES CONSENT.

Upon application to the parties for consent as a preliminary to this motion, the petitioner granted written consent to the Association, but respondent refused such consent.

BASIS FOR MOTION

Counsel for the Association have read the petition for certiorari, and the brief filed as *amicus curiae* on behalf of the National Barrel and Drum Association, Inc., and do not seek leave to repeat the arguments advanced by counsel in those documents.

Both documents allege that the decision in the court below is in conflict with the decision of the Court of Appeals for the Third Circuit in *Commodity Credit Corporation* v. *Norton*, 167 F. 2d 161, (1948). However, it is believed that further analysis of the nature and extent of the conflicts between these two decisions would contribute materially to an adequate presentation to the Court, and would be relevant to the disposition of the petition for writ of certiorari. If leave to file a brief is granted the Association, the brief will be directed to that question of law.

Wherefore, counsel for the Manufacturing Chemists' Association, Inc., respectfully requests that leave be granted for the filing of a brief as *amicus curiae*.

Respectfully submitted,

NUEL D. BELNAP
KENNETH J. MCAULIFFE

December 10th, 1957.

Certificate of Service.

I, Nuel D. Belnap, attorney for The Manufacturing Chemists' Association, Inc., and member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of December, 1957, I served copies of the foregoing document upon the several parties hereto, as follows:

1. On the Eastern Motor Express, Inc., by mailing a copy with air-mail postage prepaid to Bernard Axler, (Zelby & Burstein) 135 Broadway, New York, N. Y.

2. On A. Maschmeijer Jr., Inc., by mailing a copy with air-mail postage prepaid to Jerome G. Greenspan, 169 William Street, New York, N. Y.

3. On The National Barrel & Drum Association, Inc., by mailing a copy with air-mail postage prepaid to Morris Hershson, 200 West 57th Street, New York, N. Y.

/s/ NUEL D. BELNAP